

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

NICK J. CANATA,)	
)	
Respondent,)	Case Nos. 81-CE-198-1-D
)	81-CE-199-D
and)	81-CE-201-D
)	81-CE-217-D
UNITED FARM WORKERS OF AMERICA,)	81-CE-239-D
AFL-CIO,)	82-CE-2-D
)	82-CE-8-D
Certified Bargaining)	81-RD-2-D
Representative,)	
Charging Party,)	
)	
and)	9 ALRB No. 8
)	
DELORES LOPEZ,)	
)	
Petitioner.)	
)	

DECISION AND ORDER AND ORDER SETTING ASIDE ELECTION

On July 15, 1982, Administrative Law Judge (ALJ)^{1/} Beverly Axelrod issued the attached Decision in this proceeding. Thereafter Respondent and Charging Party each filed timely exceptions, a supporting brief, and a reply brief. The General Counsel timely filed a reply brief.

Pursuant to the provisions of Labor Code section 1146,^{2/} the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the ALJ's

^{1/} At the time of the issuance of the ALJ's Decision, all ALJ's were referred to as Administrative Law Officers. (See Cal. Admin. Code, tit. 8, § 20125, amended eff. Jan. 30, 1983.)

^{2/} All section references herein are to the California Labor Code unless otherwise stated.

Decision in light of the exceptions and briefs and has decided to affirm her rulings, findings, and conclusions as modified herein and to adopt her recommended Order as modified herein.

The hearing in this matter was based upon an order consolidating seven unfair labor practice cases with post-election objections to a decertification election conducted on September 29, 1981. The United Farm Workers of America, AFL-CIO (UFW or Union) was certified as the exclusive collective bargaining representative of the employees of Nick J. Canata (Canata or Respondent) in 1977. In 1979, Respondent and the UFW entered into a collective bargaining agreement. On September 16, 1981, during the last year of the contract, a decertification petition was filed by Delores "Jackie" Lopez.

Based on an unfair labor practice charge filed in Case No. 81-CE-217-D, the Regional Director held that the election was blocked, and dismissed the petition. Respondent appealed the dismissal and this Board, granting the request for review, reinstated the petition, and ordered that the election be conducted and that the ballots be impounded. The election was conducted on September 29, 1981, and post-election objections were thereafter timely filed by both Respondent and the UFW.^{3/}

Factual Background

Nick Canata is a relatively small grape farmer, with 240 acres of wine and table grapes near Delano. At the time of the

^{3/} In Cattle Valley Farms & Nick J. Canata Co. (1982) 8 ALRB No. 24, we issued our blocking complaint rule, in which we stated that said rule was to be applied prospectively.

decertification election, there were 22 employees eligible to vote. Of those, eight were related to Canata's one foreman, Eddie Nachor: Francis Nachor (Eddie's wife) and their children Jackie Lopez (daughter), Sandra Munoz (daughter), Juan Munoz (son-in-law), Danny Nachor (son), Robert Nachor (son), Sally Nachor (daughter-in-law) and Trini Sapien (Sally's mother). Francis, Sandra, Juan, Danny, and Robert live together in the home of the foreman, Eddie Nachor. Another son, Larry Nachor (Sally's husband), works at Canata, but is not part of the bargaining unit. Most of Eddie Nachor's family have high seniority.

Usually, the men and women work together as one crew. During one period, the men and women work separately, the men pruning and the women tying young vines. There is an issue in this case as to whether Jackie supervises the women when they work as a separate crew. At the time of the decertification petition and election, the men and women were working together pruning the ends of the arbors.

After work on September 9, 1981, Jackie Lopez and Juan Munoz^{4/} called the workers together for a meeting at the work site. Three workers testified that Munoz said owner Nick Canata had been to the foreman's house the preceding night to see about getting rid of the Union. Lopez spoke in English and Munoz translated for her. Lopez began the meeting by announcing that Canata was going to pay

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^{4/} Lopez, Munoz, and Francis Nachor testified that they got the idea of decertifying the Union when they read about the events at Radovich in the newspapers. A decertification election was held at Radovich on September 8, 1981.

them for Labor Day, the previous Monday.^{5/} (They received payment for Labor Day on their next payroll check.) Lopez then told the workers about the decertification process and asked those who would support a decertification to raise their hands. A majority of the employees present raised their hands. There is contradicted testimony that Munoz told one employee to raise his hand or be fired. Lopez told the workers that they would meet the next morning to go to the ALRB Regional office in Delano to file the petition.

A large group of employees went to the Delano office on September 10. While the employees were there, a UFW representative, Ken Schroeder arrived. When he asked what the workers were doing, Munoz replied, "Nick [Canata] did not have anything to do with it." Lopez was given the petition to fill out and telephoned Canata to find out whether Respondent was "in the last year of a contract." She talked to Noreen Canata, Nick's mother, who does Respondent's bookkeeping. Noreen told Lopez she would have Nick return the call. Although both Nick Canata and Lopez denied that a conversation between them took place, Noreen Canata testified that her son later told her that Lopez had said that the ALRB was making it difficult for her to file the decertification petition.

Lopez returned to the Delano office of the ALRB on September 11, where she was told she had used the wrong petition form and was given the proper one to complete. Lopez and Munoz thereafter gathered signatures on the new form, which they filed

^{5/} The crew had not worked on Labor Day. Labor Day was not a paid holiday under the then-existing contract.

on September 16.

Between September 16 and September 28, Nick Canata made four or five "no union" campaign speeches, which were translated for him by a labor consultant, Joe Sanchez, who Canata hired for the campaign. Canata had a prepared text that he read each time, after which he answered questions from the employees. There were frequent questions about the medical plan Canata had provided for his foreman, Eddie Nachor, and whether he would extend that plan to the employees.

The existing contract had a wage reopener clause. Pursuant to that provision, the parties, in mid-September, agreed to raise the general wage rate from \$4.10 per hour to \$4.45 per hour, retroactive to July 1. UFW representative, Juan Cervantes went to the fields the day after the agreement and obtained the employees' ratification of the increase. On September 19, Canata read from his prepared text the following:

As evidence of my fairness, I made an agreement with the union to pay \$4.45/hr. retroactive to July 1. Regardless of the outcome of the election, I intend to live up to that agreement.

Analysis of the Post-Election Objections and Related Unfair Labor Practice Allegations

The ALJ found that Lopez and Munoz, in their decertification efforts, were acting as agents of Canata,^{6/}

^{6/}At the end of General Counsel's case in chief, the ALJ granted Respondent's motion to dismiss the allegations that Munoz was acting as agent of Canata in the decertification effort and struck all hearsay testimony by him that she had previously received solely upon the basis that they were admissions by a party. On her own motion, she reversed that ruling in her Decision.

Vista Verde Farms v. ALRB (1981) 29 Cal.3d 307 [172 Cal.Rptr. 720], but were not supervisors, as alleged. The ALJ concluded that Canata interfered with its employees' free choice by promising and paying the employees for Labor Day as a holiday, announcing and promising a wage increase during the preelection campaign, promising better medical benefits, and giving unlawful assistance to the decertification effort. For all the above reasons, she recommended that the election be set aside.

Respondent, in its exceptions, argues that the ALJ, by reversing her ruling on Munoz, violated its due process rights and thereby prejudiced Respondent. We find merit in that argument. It is unfair to use a fact to find liability, where the respondent did not have an opportunity to contest that fact. (NLRB v. I. Posner (2nd Cir. 1962) 304 F.2d 773 [50 LRRM 2680], board must allow respondent to raise a defense at the compliance stage since the ALJ mistakenly assured its attorneys that they would have a right to do so; Wheeler v. NLRB (D.C. Cir. 1963) 314 F.2d 260 [52 LRRM 2138], where the ALJ did not allow respondent to cross-examine as to testimony later relied on as "background," the proper remedy is remand; Massachusetts Bending Co. v. Industrial Accident Commission (1946) 74 Cal.App.2d 911 [170 P.2d 36], the ALJ must allow party the opportunity to cross-examine a witness who prepared documents introduced into evidence.)

Generally, the proper remedy in this situation is remand. (Oneota Dress Co. v. NLRB (2nd Cir. 1964) 331 F.2d 1 [56 LRRM 2497]; Wheeler, supra, 314 F.2d 260.) However, since we find sufficient grounds to set aside the election, independent of any reliance on

the acts or statements of Munoz, we find it unnecessary to remand.^{7/}

The ALJ concluded that Lopez was acting as an agent of Respondent, but that she was not a supervisor. The UFW, in its exceptions, argues that Lopez was a supervisor, and that the decertification petition must therefore be dismissed, as a petition filed by a supervisor is invalid. (Clyde J. Merris (1948)

77 NLRB 1375 [22 LRRM 1142].) Respondent argues that Lopez was neither a supervisor nor an agent. We have analyzed the record and the arguments presented in the briefs before us and we affirm the ALJ's conclusions as to Lopez' status.

Lopez, Eddie Nachor's daughter, was a bargaining unit employee and paid union dues. She started working for Respondent five years ago. At least two years prior to the decertification effort, Canata asked Lopez to help with the bookkeeping and told her she would be paid for that work. Lopez accepted and thereafter, at the end of each payroll week, she prepared the payroll sheets, using information from her father's time book. Depending on how many employees were working, she spent from 45 minutes to 3 hours per week on that assignment. At first, she was compensated for that work by being paid a bonus. Beginning in 1981, Canata decided to pay Lopez higher wages, instead of a bonus, to compensate her for the payroll work. Thus, she was paid \$4.30 per hour for the time she worked in the crew and the time she devoted to bookkeeping,

^{7/} We do find there is prima facie evidence that Munoz was acting as Respondent's agent during the decertification campaign. Otherwise, we would dismiss the pertinent allegations.

while the other employees were paid \$4.10 per hour. When the general rate increased to \$4.45 per hour, Lopez was paid \$4.65, but her wage was not negotiated with the UFW. Other employees knew about Lopez' special duties and her higher pay.

From January through March of each year, Respondent's female employees work apart from the men, tying young vines. During such periods, foreman Eddie Nachor stayed with the men's crew. Some employees testified that Lopez acted like a forelady during that period, giving the women employees orders, telling them which rows to do, and announcing the time for breaks and lunch. Others, all relatives of the foreman, denied that Lopez acted with any authority. It is undisputed that either Canata or Nachor came by during the day to check on the women's crew. Victor Chavez, an elderly employee, was at times assigned to work with the women's crew. He testified that, when he was first assigned there, Nachor told him Jackie Lopez was in charge and would give him instructions, and that she in fact did so. That testimony was not specifically denied by Nachor or Lopez and the ALJ credited the testimony of Chavez.^{8/}

UFW representative Juan Cervantes testified that, in January of 1981, he went to a field where the women's crew was working in order to deliver the Union's medical cards to two

^{8/} To the extent that credibility resolutions are based upon the demeanor of the witnesses, we will not disturb them unless the clear preponderance of the relevant evidence demonstrates that they are incorrect. (Adam Dairy dba Rancho dos Rios (1978) 4 ALRB No. 24; Standard Dry Wall Products (1950) 91 NLRB 544 [26 LRRM 1531].) We have reviewed the record and find the ALJ's resolutions of witness credibility to be supported by the record as a whole.

employees. When he approached, he asked two women who was in charge and they pointed to Lopez. When he talked to Lopez, she agreed to take responsibility for distributing the cards. We affirm the ALJ's finding regarding that incident.^{9/}

At the September 9 meeting and in subsequent discussions among the employees, Jackie Lopez advocated that the workers should vote against the Union. Employee Avelina Coronel testified that Lopez told them that Respondent's medical benefits were better than the UFW's and that Respondent would extend its plan to all employees. As it was not denied by Lopez, we credit that testimony of Coronel. We likewise credit the testimony of employees Manuel Quiroz, Salvador Gandorilla, and Sally Nachor that Lopez told them Respondent's offer of \$4.45 per hour in negotiations was reasonable, and that Respondent could not pay more as he was a small farmer.

If the employees had reasonable cause to believe that Lopez, in her decertification efforts, was acting for or on behalf of Respondent, her acts and conduct are attributable to Respondent as those of an agent. (Vista Verde, supra, 29 Cal.3d 307; IAM v. NLRB (1940) 311 U.S. 72 [5 LRRM 887].) We find that, given Lopez' "special status" among the employees, it was reasonable for them to believe that she, in her decertification efforts, was acting on behalf of Respondent. We base this finding on the following factors: her status as daughter of the foreman; her higher wage

^{9/} Respondent excepts to this finding on the basis that company records show Lopez did not work in January in the field described by Cervantes. We do not believe this compels an opposite finding, especially in light of the fact that the incident was not denied by Lopez.

which was known to other employees and not negotiated with the Union; her unique job as payroll assistant; the fact that she served as a conduit for Respondent's information and instructions to the employees, as in announcing the Labor Day pay; and that she appeared to be privy to inside information, as evidenced by her discussions with the employees concerning how much Respondent could afford to offer in negotiations. Many employees perceived her to act in a "lead" capacity. We find the facts of this case similar to those in Columbia Building Materials, Inc. (1979) 239 NLRB 1342 [100 LRRM 1182], enforced (9th Cir. 1980) 106 LRRM 3076, and dissimilar to those in F.M. Broadcasting (1974) 211 NLRB 560 [87 LRRM 1057], cited by Respondent. In F.M. Broadcasting, the decertification petitioner, the president's son-in-law, had no special privileges and specifically told people that he was acting on his own. Lopez had special privileges, and disingenuously, told people that Canata "wasn't supposed to know what was going on." (See also Primrose Super Market (1968) 171 NLRB 1028 [69 LRRM 1352].) We find that the conduct of Lopez in the decertification drive was attributable to Canata and that Canata, therefore, gave unlawful assistance to the effort and thereby violated section 1153 (a) of the Agricultural Labor Relations Act (Act). We conclude that Respondent engaged in unlawful interrogation, in violation of section 1153(a), by the conduct of Lopez in asking the employees who supported the decertification effort to raise their hands at the September 9 meeting.

The existing contract had two paid holidays, Lincoln's Birthday and Thanksgiving. The parties stipulated that Labor Day

was not paid as a holiday during the first two years of the contract, 1979 and 1980. Moreover, Respondent gave no notice to the UFW prior to paying its employees for that holiday in 1981. We conclude that Respondent's unilateral change in that respect constituted a per se violation of section 1153(e) and (a) of the Act.

Employment benefits promised or granted to employees during the pendency of an election constitute objectionable conduct and may be grounds for setting aside the election. (Rupp Industries, Inc. (1975) 217 NLRB 385 [88 LRRM 1603]; Royal Packing Co. (1979) 5 ALRB No. 31.) Since Respondent's employees had not previously been paid for Labor Day and since it was announced at the time of the first decertification meeting, we find that the announcement clearly tended to affect the employees' free choice. We credit the uncontradicted testimony of many witnesses, including Juan Munoz, that the announcement came as a surprise and made them happy. We affirm the ALJ's finding Canata's assertion that it was a genuine mistake strains credulity, but find that such a "defense" is irrelevant to the post-election objection. Even if the payment were made by mistake, it would still be grounds for setting aside an election if, as we have found in the instant case, it tended to interfere with the employees' free choice in the upcoming election.

We reverse the ALJ's conclusion that the Respondent made an unlawful promise of benefit during the preelection campaign by its announcement of a retroactive wage increase. Any announcement by an employer of a new economic benefit during an election campaign is presumed improper and, to rebut that presumption, the

employer must adequately explain the reason for granting the benefit and the timing of the announcement. (Rupp Industries, Inc. v. NLRB, supra, 217 NLRB 385; Prohoroff Poultry Farms (1977) 3 ALRB No. 87.) Respondent met its burden in this case. The wage increase was bilaterally negotiated with the Union pursuant to a wage reopener clause. Respondent announced the increase immediately after the agreement was ratified by the employees, and Canata, during the announcement, gave credit to the Union.

In the course of the preelection period, Canata delivered four or five "no union" campaign speeches to employees. We affirm the ALJ's finding that during those speeches Canata promised the employees better medical benefits and we conclude that that promise constituted a violation of section 1153(a) as it tended to affect employee free choice. Contrary to the ALJ, we find that Respondent's speeches did not contain material misrepresentations about the UFW.^{10/}

In conclusion, we find that the decertification petition was invalid because it was filed by an agent of the Respondent. (Clyde J. Merris, supra, 77 NLRB 1375; Modern Hard Chrome (1959) 124 NLRB 1235 [44 LRRM 1624].) Additionally, we find that the election was tainted and that employee free choice was affected by the campaigning and other acts of unlawful interference by Respondent's agent, Jackie Lopez, the decertification petitioner; by Respondent's announcement and payment of Labor Day as holiday;

^{10/} Member Waldie does not reach the issue of whether an employer's no union campaign, absent threats or promises, would be objectionable conduct in a decertification election.

and by Respondent's promise of improved medical benefits.

ORDER SETTING ASIDE ELECTION

For all the above reasons, we order that the election conducted on September 29, 1981, be, and it hereby is, set aside, and that the decertification petition herein be, and it hereby is, dismissed.^{11/}

The Unfair Labor Practice Allegations

Denial of Access and Surveillance. On September 11, Ken Schroeder and Juan Cervantes, UFW representatives, went to Respondent's ranch to investigate Canata's role in the decertification effort, and arrived there while the crews were working. Nick Canata asked them not to enter during work hours. After discussing a provision of the contract with Canata, Schroeder and Cervantes, against the wishes of Canata, entered Respondent's premises and began talking to employees. Canata followed them into the fields and stayed, asserting that he needed to supervise the employees' work. At one point, Cervantes asked Canata to stop surveilling and Canata did move away.

We agree with the ALJ's observation that this particular access issue should be resolved by the parties through contract interpretation or otherwise, rather than in unfair labor practice proceedings, as we find there is insufficient evidence upon which to determine whether there was unlawful denial of access or unlawful surveillance. Accordingly, we hereby dismiss those allegations

^{11/} We find, as did the ALJ, and in view of our conclusions and Order, that it is unnecessary to consider or resolve Respondent's post-election objections.

of the Complaint.

Threat by Juan Munoz. On the first day of the hearing, employee Jose Antonio Gandorilla testified that on the day of the first decertification meeting, September 9, 1981, Juan Munoz told him and other employees that Nick Canata had been to foreman Eddie Nachor's house the night before to talk about getting rid of the Union. The day after that testimony, Munoz and Gandorilla had a confrontation, which resulted in unfair labor practice charges being filed, and settled, the following day, January 13, 1982. On the latter date, Munoz approached employee Roberto Gandorilla, Jose Antonio Gandorilla's brother, addressed him in vulgarities, referring to his brother's testimony, and threatened him by trying to provoke a fight. As a result, another unfair labor practice charge was filed.^{12/} Canata testified that he privately admonished Munoz after he heard of that incident.^{13/} Munoz told Canata he had merely been joking.

Munoz may be deemed to be an agent of Canata and his acts attributable to Canata if Canata would gain a benefit from those acts, knew about them, and did nothing to disavow or repudiate those acts. (Vista Verde, supra, 29 Cal.3d 307; Sewell, Inc. (1973) 207 NLRB 325 [84 LRRM 1453]; Sprouse-Reitz Co., Inc. (1972) 199 NLRB 943 [81 LRRM 1373].) It is undisputed that the threat

^{12/} At the conclusion of General Counsel's case in chief, Respondent moved to dismiss all allegations in the complaint in which Munoz was alleged to be an agent of Respondent. The ALJ denied the motion as it pertained to this allegation.

^{13/} Canata testified that he told Munoz, "Don't joke around, don't talk to these people...just stay away...I don't want to hear of another incident."

occurred and that Canata found out about it shortly thereafter.

The potential benefit to Respondent was substantial. Gandorilla's testimony, and testimony like it, was clearly probative as to the issue of Respondent instigation of the decertification drive. Munoz' threatening behavior, coming at the beginning of the hearing, clearly tended to intimidate and coerce Gandorilla and other witnesses and/or potential witnesses and to discourage or prevent them from testifying.

Respondent, in its exceptions, argues that Munoz was not its agent and that, even if he were, Canata did not ratify or condone the conduct because he reprimanded Munoz as soon as he learned of the incident. We find no merit in that argument. Munoz' threats are attributable to Respondent as those of an agent. (Vista Verde, supra, 29 Cal.3d 307.) We find that Respondent's private reprimand of Munoz did not adequately disavow or repudiate Munoz' acts and statements to Gandorilla as would a disavowal or repudiation communicated to Gandorilla and the other employees. Accordingly, we conclude that Respondent, by the aforesaid acts and conduct of Munoz, violated section 1153(a) of the Act.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (ALRB or Board) hereby orders that Respondent Nick J. Canata, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Promising and/or granting holiday pay or other employment benefits without first giving its employees' certified

bargaining representative notice thereof and an opportunity to bargain about the benefit(s).

(b) Interrogating any agricultural employee concerning his or her union activities or sympathies.

(c) Interfering with, restraining, or coercing any agricultural employee for testifying or participating in any manner in any ALRB proceeding.

(d) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Agricultural Labor Relations Act (Act).

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Sign the Notice to Agricultural Employees attached hereto and, after its translation by Board agents into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(b) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from September 9, 1981, until the date on which the said Notice is mailed.

(c) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(d) Arrange for a Board agent or a representative of Respondent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and/or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(e) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: March 8, 1983

ALFRED H. SONG, Chairman

JOHN P. McCARTHY, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint which alleged that we, Nick J. Canata, had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board has found that we violated the Agricultural Labor Relations Act and we interfered with your free choice during the election held on September 29, 1981. The Board has ordered that the election be nullified and that we post this Notice and mail it to those who worked at the company between September 9, 1981, and the present. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT promise or grant any new holiday pay or other new employment benefit(s) during a preelection campaign without giving the certified union advance notice and an opportunity to bargain with us about such benefit(s).

WE WILL NOT interrogate you regarding your union sympathies or activities.

WE WILL NOT interfere with, restrain or coerce any agricultural employee for giving testimony at an ALRB hearing or otherwise cooperating with agents of the ALRB.

Dated:

NICK J. CANATA

By:

Representative

Title

If you have any questions about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California, 93215. The telephone number is (805) 725-5770.

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Nick J. Canata
(UFW - Delores Lopez)

9 ALRB No. 8
Case Nos. 81-CE-198-1-D,
et al.

ALJ DECISION

A decertification election was held among Respondent's employees on September 29, 1981, and the ballots impounded by order of the Board. The consolidated complaint alleges that Respondent engaged in unfair labor practices by: the acts of its agents in the decertification drive, interrogations, promises and payments of benefits, access denials, surveillance, threats, and hiring employees for the primary purpose of voting. Seven post-election objections by the UFW were set for hearing.

The ALJ recommended that the election be set aside because the decertification petition was circulated and filed by agents of the Respondent, Jackie Lopez and Juan Munoz, and because Respondent interfered with free choice by announcing and paying for a new holiday, announcing a new wage increase and promising better wages and improved medical benefits. The ALJ also concluded that Respondent committed an unfair labor practice by threatening a witness who testified at an ALRB hearing. The ALJ recommended dismissal of the remaining allegations of the complaint.

BOARD DECISION

The Board set aside the election on the basis that the petition was filed by an agent of the Respondent, Jackie Lopez, and that employees' free choice was interfered with by Lopez' interrogations and Canata's making Labor Day a paid holiday and his promise of improved medical benefits.

The Board refused to find Respondent responsible for the acts of Juan Munoz as the ALJ had dismissed those allegations at the conclusion of General Counsel's case in chief and Respondent had no opportunity to rebut that allegation of agency.

The Board further found that Respondent was guilty of unfair labor practices in violation of section 1153(a) and (e) by interrogating employees, unilaterally making Labor Day a paid holiday, assisting the decertification drive, promising improved medical benefits, and threatening a witness.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

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STATE OF CALIFORNIA

BEFORE THE AGRICULTURAL LABOR RELATIONS BOARD

* * * * *

In the Matter of: *

Nick J. Canata, Respondent *

& *

United Farm Workers of America, *

AFL-CIO, Charging Party -- *

Certified Bargaining Representative, *

& *

Delores Lopez, Petitioner *

* * * * *

Case Nos.:

81-CE-198-1-D ✓
81-CE-199-D
81-CE-201-D
81-CE-217-D
81-CE-239-D
82-CE-2-D
82-CE-8-D
81-RD-2-D

Constance Carey, Esq., Staff Counsel,
of Salinas, California, for the
General Counsel

Seyfarth, Shaw, Fairweather, and
Geraldson, by Keith Hunkster, Jr.,
Esq., and Raymond Kepner, Esq., of
Los Angeles, California, for Respondent

Marcos Camacho, Esq., of Keene, California,
for the Charging Party

Dolores Lopez, Petitioner, pro se.

DECISION

Statement of the Case

BEVERLY AXELROD, Administrative Law Officer: These cases were heard before me in Delano, California, on January 6, 11, 12, 13, 14, 15, 20, 21, 22, 26, 27, 28, 29, February 1, and 2, 1982. The order consolidating the various unfair labor practice ("ULP") charges and the objections of the

decertification election issued on October 22, 1981. The moving papers consist of the General Counsel's Second Amended Consolidated Complaint (hereinafter the "Complaint"), issued by the Delano Regional Director on January 8, 1982,¹ alleging unfair labor practices in violation of §§ 1153(a), (e), and 1154.6 of the Agricultural Labor Relations Act ("the Act") by Nick J. Canata ("Respondent"), the Answer thereto dated October 28, 1981,² the Objections to Election and Petition to Set Aside Election ("Objections"), filed by the Charging Party ("the Union"), dated October 5, 1981, and the Employer's [Respondent's] Objections to Conduct Affecting Results of Election, dated October 5, 1981.³ The ULP complaints are based on charges by the Union filed on September 11, 1981 (Nos. 81-CE-198-1-D, 199-D, and 201-D), September 22, 1981 (No. 81-CE-217-D), October 13, 1981 (No. 81-CE-239-D), and January 6, 1982 (No. 82-CE-2-D).⁴ Number 81-CE-198-1-D is

1. A Third Amended Consolidated Complaint was served after the hearing, on February 9, 1982, incorporating the modifications made during the hearing.

2. The Answer in question was entitled Answer to First Amended Consolidated Complaint. My discussion of the issue is based upon this Answer. No separate answer to the Second Amended Consolidated Complaint was filed, nor was one required. 8 Cal. Adm. Code §20230.

3. All but the last of the case numbers refer to the ULP cases. The last number refers to the election petition.

4. See footnote 10 infra.

an amended version of number 81-CE-198-D. (All of the charges are contained in the exhibits.) The decertification petition, No. 81-RD-2-D, was filed September 16, 1981.⁵

The General Counsel was permitted to amend the Complaint during the hearing, on January 15, 1982, to incorporate Case No. 82-CE-8-D, General Counsel's Exhibit 7,⁶ which alleges a violation of §§1153(a),(d) and 1151.6 of the Act by Respondent. The amendment states that "[O]n January 13, 1982,

5. The decertification petition was dismissed on September 22, 1981, under the Board's "blocking" rule, based on charge number 81-CE-217-D. Respondent appealed the dismissal and the Union opposed the appeal on substantive and procedural grounds, the latter including the ground that the employee lacked standing to challenge the dismissal of a petition filed by an employee. On September 25, 1981, the Board granted the request for review and reinstated the petition, ordering a hearing on the ULP charges on an expedited basis. Cattle Valley Farms & Nick J. Canata Co. 8 ALRB No. 24 (1982). Requests for reconsideration of the order by both the Employer and the Union were denied September 29. The election took place on September 29, and objections thereto were filed by both Respondent and the Union on October 5. The election objections were consolidated with the ULP cases and set for hearing in an order dated October 22, 1981 (U.F.W. Ex. 1-2), which set out the issues for consideration.

The procedural issues, including standing, raised in Objections III and V of the Union Objections are addressed only by Respondent here. Objections I and II were certified as presenting novel legal issues. While not addressed in the hearing, they are not foreclosed from further review by the Board.

The Board dismissed Objections IV and VI, and these issues are not before me.

Because there is considerable overlap between the ULP and election cases, the issues touching on each are merged for discussion in this Opinion.

6. References to the exhibits will be abbreviated G.C. Ex. (General Counsel's exhibits), U.F.W. Ex. (Union's exhibits), or R. Ex. (Respondent's exhibits).

Respondent, through Agent Juan Munoz, threatened, intimidated, and coerced Roberto Gandorilla because of the testimony given by his brother, Antonio Gandorilla." Reporter's Transcript, v. 5, p. 37.⁷

All parties have been duly served.

At the prehearing conference, the Union was granted leave to intervene in the ULP portion of the case.

Respondent's motion to strike various portions of the complaint was denied.

All parties were given full opportunity to participate in the hearing. The petitioner in the election case, Ms. Lopez, chose to participate in the hearing without representation by counsel; the remaining parties were represented by counsel. At the close of the hearing each counsel filed a brief in support of his or her position.

At the conclusion of the General Counsel's case, Respondent made certain motions to dismiss portions of the complaint and the Objections. All of the parties were given full opportunity to argue, and the motions were granted in part and denied in part, pursuant to 8 Cal. Adm. Code §20242. These rulings are discussed below, in the introduction to the discussion of the unfair labor practices.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

7. References to the Reporter's Transcript herein will be abbreviated "RT", giving the volume and page.

Findings of Fact

I. Jurisdiction⁸

Nick J. Canata is a sole proprietorship engaged in the growing of wine and table grapes in Tulare and Kern counties, California, and is an agricultural employer within the meaning of §1140.4(c) of the Act.

The Union is a labor organization representing agricultural employees within the meaning of §1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices And Election Irregularities

The Union, in the underlying ULP charges, and the General Counsel, in the Complaint, contended that Respondent, acting through various supervisory employees,⁹ including the sole proprietor, initiated and promoted the decertification effort on its ranch, offered and granted several improper inducements in the form of increased benefits and wages without bargaining in good faith concerning them, engaged in various coercive and threatening acts, engaged in threats intended to influence the testimony given in the hearing,

8. These jurisdictional matters were conceded in the moving papers.

9. Eddie Nachor, Delores Lopez, Juan Munoz, and Larry Nachor. The parties removed Frances Nachor from the list of alleged supervisors in ¶4 of the Complaint by stipulation.

denied access to Union representatives, conducted captive audience hearings, conducted surveillance of protected activities, and interrogated workers concerning their union sympathies, thereby interfering with Respondent's employees' exercise of their rights to self-organization and collective bargaining under §1152 of the Act, and thereby violating §§1153(a), (d), (e), and 1151.6. Respondent admitted supervisory status as to Nick Canata and Eddie Nachor, but denied it as to the other individuals referred to in the allegations, and Respondent denied the remainder of the material allegations.

At the close of the General Counsel's case, Respondent moved to dismiss, for insufficient evidence, allegations that Respondent, through its attorneys, interfered with and coerced employee witnesses by interrogating them concerning their union activities and sympathies. They also moved to dismiss for insufficient evidence the charge that Respondent hired an employee for the primary purpose of voting in the decertification election. These motions were granted, thereby dismissing ¶¶ 11 and 12 of the Complaint.¹⁰ Respondent also moved to dismiss those portions of the complaint, and to charge No. 81-CE-199-D, which sought to hold the Employer accountable for the activities of Juan Munoz, one of the prime movers of the decertification petition, for the reason that no sufficient agency had been shown to establish

10. These rulings eliminated Nos. 81-CE-239-D and 82-CE-2-D from the case.

liability on the Employer's part for his acts. Respondent moved, further, to strike the testimony concerning the incident in which Munoz had allegedly threatened Roberto Gandorilla, a witness in the hearing, for the same reason. This was alleged in the amendment to the complaint based upon charge No. 82-CE-8-D, referred to above in the text at footnote 6. I granted these motions on February 1, 1982, dismissing ¶10 of the Complaint and that portion of ¶4 referring to Juan Munoz. Respondent also moved to strike all testimony of witnesses concerning out-of-court statements by Munoz as hearsay, again because of a failure of proof that his acts were attributable to the Employer, and I granted this motion to the extent that such statements did not come within any exception to the hearsay rule.

Subsequent to the hearing, upon examination of the transcript and consideration of the Supreme Court's opinion is Vista Verde Farms v. ALRB, 29 Cal 3rd 307, 172 CR 720 (1981), I have determined that the rulings referred to were erroneous, and they are reversed.

Respondent's other motions to dismiss concerned portions of the Objections to the election, and raised parallel issues to those discussed above. ¶¶VII C and X, concerning the hiring of Danny Nachor for the purpose of voting, were dismissed for insufficient evidence. ¶VII B, alleging a meeting of the Employer with Juan Munoz and others to plan the decertification election, was dismissed on the same

basis. The motions as to other paragraphs were denied.¹¹

A. The Operation of the Farm

The wine and table grape operation run by Nick Canata as a sole proprietorship in the San Joaquin Valley occupies 240 acres.

The Union was certified as the bargaining representative for Respondent's workers on June 1, 1977. The current contract between Respondent and the Union went into effect on August 15, 1979, retroactive to June 1, 1979, for a period of three years.¹² The contract contains a reopener provision on wages and medical benefits which took effect on May 11, 1981.

At the time of the decertification election, which is the subject of this case, Respondent listed 22 workers on his eligibility list (U.F.W. Ex. 1-Q).¹³ The supervisor is Eddie Nachor (Eddie), and there is no disagreement that he and Nick Canata (Nick) both performed supervisorial activities. Both frequently check on the work of the employees in the field.

Delores Lopez (Jackie) and Juan Munoz, whose activities are a primary focus of this case, are both listed as members of the bargaining unit. In addition there are several employees who may be distinguishable from either the regular work force or management. Of these, only Larry Nachor is of

11. These included motions to dismiss ¶ 4 as to Larry Nachor, and to dismiss ¶¶ 7A and 8.

12. These facts were alleged in the complaint and admitted in the answer.

The certification remains in force until the resolution of this case pursuant to the Board's order of September 28, 1981. U.F.W. Ex. 1-K.

13. Larry drives the tractor, irrigates, is a "Swamper," and

any importance here.¹³

Many of the workers are related to Eddie, the foreman, by blood or marriage, several live in his house, and the family is close. Of those on the work force, Frances Nachor is Eddie's wife. Jackie, Sandra Munoz, Larry Nachor, Danny Nachor, and Robert Nachor, are children of Eddie and Frances. Sandra Munoz is married to Juan Munoz. Larry Nachor is married to Sally Nachor. Sally's mother is Trini Sapien. It is noteworthy that of the 22 workers on the eligibility list, 8 are related to the foreman.¹⁴ Frances, Robert, Danny, Juan, and Sandra live in Eddie's house. Many of the family have high seniority.

Usually the men and women work together in the fields, but at times the women work separately from the men because the men's work is deemed to be too difficult for them. During one period, an older male worker, Victor Chavez, and a boy, Robert Nachor, worked in the women's crew. A critical question is whether, during these times, all supervision for the women is provided by Eddie and Nick, or whether Jackie

does odd jobs. He is not listed as part of the bargaining unit but is covered by a separate understanding as a "working supervisor." However, Canata considers him not to be a supervisor. Juan Munoz is also a swamper and former tractor driver. Max Macias is a tractor driver and is named on the eligibility list.

14. Frances, Danny, Robert, and Sally Nachor, Jackie Lopez, Sandra Munoz, Juan Munoz and Trini Sapien. Larry is not included on the eligibility list. Of these, Frances, Sally, Jackie, Sandra, Juan and Trini testified for the Respondent. Nick, Eddie, and Noreen Canata also testified. Respondent called no other witnesses.

supervises the women. The evidence on this issue is discussed more thoroughly below.

Eddie keeps track of the workers' hours in his book ("Eddie's book") (G.C. Ex. 8), except for Larry Nachor, Max Macias and Juan Munoz, whose hours Nick keeps. Jackie compiles the payroll, usually entering in it figures from Eddie's book, but sometimes based on her own records or recollections of the workers' hours, especially during periods when the women are working alone. She prepares the payroll each Wednesday evening after work, also writing the names on the page to be used by Eddie the following week. Nick's mother, Noreen Canata, works in the farm office and adds to the payroll computations, the deductions for each worker, and net pay.

Nick himself keeps time for Larry Nachor and Max Macias. Eddie keeps his own time in his book. Juan Munoz keeps his own time on a separate time card, although Eddie may also list him in his book.

B. The Decertification Campaign

Two days after Labor Day, 1981, on September 9, Jackie Lopez and Juan Munoz conducted a meeting of Respondent's workers in the field at the end of the work day. According to the testimony, Juan had been dissatisfied for a long time with the Union's medical plan, and this was the basis for his desire to decertify the Union. He had previously been on the Employer's medical plan and felt that it

was preferable. Jackie also wished to decertify, and was aware, to some extent, of the petition procedure which had to be followed with the ALRB (Board). Discussions between Jackie and Juan concerning decertification had been going on for some time, and apparently included Frances Nachor, the wife of Eddie, the foreman. All of Respondent's employees who testified, including Frances, were very clear that neither Eddie nor Nick were told anything concerning these plans prior to the first attempt to file a petition. According to Jackie, she and Juan first talked about decertification 1-2 weeks before the September 9 meeting; Juan said he had been talking to various workers about the insurance problems for at least 1-2 months; he had been mentioning it to Nick for years. Both Juan and Jackie contended that the idea arose from a decertification effort at the Radovich Farm, about which they read in the newspaper. Jackie said it was mainly Juan's idea.

Jackie had been on vacation for a week prior to the meeting, and September 9 was her first day back at work -- a Wednesday. She and Juan felt this would be a suitable day for a meeting to determine what support the idea had among the workers. As soon as it began appearing work would be ending early that day, they began mentioning to the workers there would be a meeting after work. It was never announced that work would end early, but the workers knew this because no one told them to begin a new task.

Immediately prior to the meeting, Jackie stated that she asked Nick whether she was to credit the workers for Labor Day, September 7, in preparing the payroll that night. No one had worked on Labor Day. Nick hesitated, according to her testimony, and said no. Then he changed his mind and said to pay them. The contract (R. Ex. 14, Article XXIII) provides that only Lincoln's Birthday and Thanksgiving are paid holidays; Labor Day and Memorial Day are unpaid holidays. Workers are to receive 1½ times their regular rates if they work on these days. Other witnesses stated that other workers were involved in this conversation. Frances Nachor's version was that Nick said yes immediately and made the statement to a large group of workers who had gathered around.

Nick testified he believed Labor Day was a paid holiday under the contract; he stated he learned what the contract actually provided days later. He also acknowledged holidays had been a major issue in the original contract negotiations and that the Union had pushed hard for more holidays than he was willing to give; he was aware the matter was of great concern to the Union.

It was stipulated that the workers were paid for 8 hours on Labor Day at their regular rate although it was not a paid holiday. ¹⁵

Respondent's worker witnesses uniformly stated they were unfamiliar with the terms of the contract regarding

15. Stipulation dated January 7, 1982 (not marked).

holidays and did not even recall whether they had been paid for Labor Day in previous years. It was stipulated, however, that no such payments were made in 1979 or 1980.¹⁶ At least one of the General Counsel's witnesses, Salvador Gandorilla, was aware of the contract provisions, however. And Victor Chavez, who did not know the payment was not required, told this to Kenneth Schroeder, a Union agent (and witness), who explained it to him. Chavez then told other workers what Schroeder had said.

At the meeting of September 9, Jackie spoke to the workers in English and Juan in Spanish, translating Jackie's words and adding comments of his own. All the witnesses except Munoz stated that those workers who did not already know were told that wages would be paid for Labor Day. Sally Nachor testified that they received this news happily. Munoz denied that the matter was discussed at the meeting, but stated he told some workers later and they reacted happily, because they had not expected to be paid, nor had he.

Also mentioned at the meeting was the medical plan. Munoz, especially, made a point that the Employer's plan was better than the Union's, and felt very strongly about it. Apparently several other workers were dissatisfied with the plan. The evidence was in dispute as to whether the company plan's coverage of dentist and optometrist visits was

16. See previous footnote.

mentioned: Munoz denied it, but Respondent's witnesses Frances and Sally Nachor said it was discussed, as did several of the General Counsel's witnesses (Manuel Quiroz, Avelina Coronel, and Victor Chavez). Sally said the workers were told they might get the insurance coverage that Eddie and Larry Nachor and Nick had if they voted the Union out; the terms of that coverage, which are apparently broader than the Union plan under the contract, were mentioned. The workers were not told that, in the negotiations that had been going on between the Company and the Union pursuant to the reopener clause in the contract, the Union had been bargaining for better medical coverage and higher employer contributions, which the company had refused to agree to.

Whether wages were discussed at the meeting was another area of dispute. The workers were receiving \$4.10 per hour at the time. In the negotiations, according to Schroeder, being an organizer, the Union had proposed an increase to \$4.65, and Canata had countered with an offer of \$4.45. Jackie and Juan testified that wages were not discussed. However, Sally Nachor said the workers were told at the meeting that Nick could only pay \$4.45 (but not that he had actually offered this in the negotiations), and that this amount was what other growers were paying and was all they would get with or without the Union. The General Counsel's witnesses (Chavez, Quiroz) agreed. Sally also testified Jackie or Juan said Respondent had only a small ranch and could not afford more; Jackie denied this was said and

denied she knew what had been offered in the negotiations with the Union. Sally agreed negotiations themselves were not mentioned. Other witnesses (Quiroz, Salvador Gandorilla) claimed the negotiations were referred to.

The workers were apparently paid for their time at the meeting, although the testimony was not crystal-clear here. Only the General Counsel's witnesses (Jose Antonio Gandorilla, Salvador Gandorilla, but not Avelina Coronel) stated that the workers were told they were being paid. The workers were paid for seven hours that day. Work had started at 7 and ordinarily lasted eight hours with a ½-hour lunch break. Thus, work would normally have ended at 3:30. Instead, work was completed at 2:00 or 2:30. Nick's diary recorded the ending time as 2:30. Munoz said work ended at 2:00. The meeting lasted about ½ hour.

At the meeting, the workers were asked to raise their hands if they agreed the Union should be decertified. Jackie stated that all raised their hands. Jose Antonio Gandorilla (Jose Antonio), one of the General Counsel's witnesses, stated that Munoz told Salvador Gandorilla, Jose Antonio's brother, to raise his hand; Salvador stated Eddie told him to raise his hand. Chavez testified similarly. According to Jose Antonio, Manuel Quiroz did not raise his hand and Munoz told him he would be fired if he did not; Jose Antonio also said Eddie was present but did not react to this. Quiroz confirmed this account, as did Victor Chavez; Avelina Coronel confirmed the incident, but said Eddie was not present.

Munoz, testifying for Respondent, contradicted Jackie, admitting he did hear someone tell one of the workers to raise his hand higher; but he denied threatening Salvador. Frances Nachor also confirmed that one or two of the workers did not raise their hands at first, but claimed that they changed their minds without anyone having said anything to them about it.

There was varying testimony about whether Eddie was present at the meeting. All of Respondent's witnesses were in agreement that Eddie was not present. Most of the General Counsel's witnesses (Jose Antonio, Salvador Gandorilla, Quiroz) disagreed; Chavez saw Eddie at first but did not know if he was there the whole time. But he testified Eddie later said people were going to the ALRB the following day; therefore, he knew about what had occurred.

No witness placed Nick at the meeting, but Jose Antonio testified that immediately before the meeting, Nick waved him over to the meeting place as he (Jose Antonio) was heading toward his car. There was additional testimony, however, claiming Canata's direct involvement in the decertification effort. Jose Antonio stated Munoz told him the morning of the meeting that the meeting was to occur, that it would concern decertification, and that the previous day Nick had been at Eddie's house, where Juan lived, and had talked to Juan about decertification. Roberto Gandorilla also so testified, but conceded he did not know if there was a connection between the conversation with Canata and

the decertification meeting. Munoz denied the statement.

Respondent's witnesses all denied that Nick or Eddie knew anything about the decertification effort prior to the filing of the petition. They knew, however, that there could legally be no Employer assistance to the decertification effort. Sally testified that Jackie told her this. Respondent testified that he was aware of it also, but only because it made sense to him, rather than because he had been told; and he said he did not communicate it to any of his staff. He denied he discussed decertification with anyone prior to being served with the petition. He also said that he did not know about the worker's meeting until the preparations for the hearing; he also said he heard it from a Board agent who was investigating the ULP charges, but the date of this conversation was not stated.

Eddie also denied knowing about decertification and even said he did not know about either the meeting or the election. He was quite evasive in his answers, and although a question was raised as to his understanding of the translation (the questions were translated first into Tagalog; then Respondent proposed changing to Ilocano, which was done), it was clear Eddie understood both languages as well as a good deal of the English used in the hearing, as he answered some questions in English. He was still more evasive when the questioning focused on the employment of Danny Nachor, whom the General Counsel contended was illegally hired for the purpose of voting and the records

falsified to disguise the fact.¹⁷

The workers were told they should go together to the ALRB in Delano the following day, Thursday, September 10, to file the decertification petition. Respondent's witnesses said they were told to meet in Delano. Some of the General Counsel's witnesses (Quiroz, Jose Antonio, and Salvador Gandorilla, Chavez) stated they were told to report to Eddie's house first, the following morning.

September 10 there was no work at the ranch. Many of the workers traveled to Delano, and Jackie attempted to file a decertification petition with the Board. Apparently she was given the wrong forms after there was some discussion with a Board employee about whether or not the contract was in its final year, a prerequisite under the Act in decertification cases. Jackie attempted to reach Nick at his office to ask whether this was the case, but reached Noreen Canata, who mistakenly told her the contract was no longer in force. Jackie asked Noreen to have Nick return her call, and Mrs. Canata later told Nick that Jackie had called from the Board, but not why. Nick testified that he did not call Jackie back, but talked to her afterward and learned what Noreen had told her. Probably the following day (September 11), he asked Noreen why she had done this, and she explained

17. The paragraphs of the complaint relating to this conduct were dismissed for insufficient evidence during the hearing. Footnote 10 supra. Eddie's testimony on this subject nevertheless reflected on his credibility.

that she had thought Jackie was asking about the negotiations. Noreen testified that Nick also told her that the workers were going to have to get a new list of names on a new form. He also mentioned to her the problems that Jackie had had at the Board getting the right form. Nevertheless, Jackie wrote on the petition form that the contract was in its last year, and, in his testimony, Nick denied that he knew of any difficulties the workers had in filing the petition until after it was filed.

Jackie testified she and Juan collected signatures that night; they went to the worker's houses and Juan went inside with the petition while she waited outside. Juan, however, denied collecting any signatures, maintaining that all the workers had signed at the Board office earlier in the day. Manuel Quiroz testified that Juan told him he had better vote against the Union, and asked why the Union people were at his house so often.

Ken Schroeder, the Union organizer, happened to arrive at the Board office on September 10 and encountered the workers outside. He was told of the decertification effort by Munoz, who volunteered, without being asked, that "Nick Canata had nothing to do with it."¹⁸ Schroeder then filed the initial ULP charge, No. 81-CE-198-D, which initiated the present proceeding, charging the Employer with promoting the decertification effort. The charge was served on Canata

18. R.T. X:6.

the same day.

Schroeder and Juan Cervantes visited the ranch the following day, September 11. Canata attempted to deny them access, demanding that they return at lunch break or the end of the work day. The organizers argued that the contract allowed them access for contract administration, and Canata reviewed the contract, but persisted in asking them to leave. They went ahead and spoke to some of the workers, but Cervantes complained that Canata followed him and paced back and forth about five to seven feet behind him while Cervantes conversed with the workers. Canata testified that he had a special export order to get out and he was following his normal procedure of checking on the work. He also said this was the point at which he first learned of the decertification attempt, and he doubted it was true. Charge No. 81-CE-201-D was filed based on the alleged refusal of access and surveillance.

The same evening, Cervantes visited one of the workers at his home and found Munoz and several other people there. An argument occurred regarding whether Eddie had been present at the workers' meeting, with Munoz saying no and the others maintaining he was there. Munoz allegedly became violent and threatened Cervantes, saying, "I know karate, and you and this other gentleman, I can take you both on."¹⁹ Cervantes filed a third charge, No. 81-CE-199-D, based on the

19. R.T. XII:62.

threat by Munoz. Munoz denied the entire incident, claiming he was not present.

Additional Union visits to the ranch occurred at frequent intervals.

Jackie returned to the Board with the papers on September 11, alone. There she learned that she had been given the wrong form the previous day and would have to obtain new signatures. This was done, and the petition²⁰ was finally accepted for filing on September 16. The payroll records (G.C. Ex. 6) indicate that Jackie credited herself with the full eight hours worked on September 11 and September 16, though some of her time was taken in traveling to Delano on both days.

Respondent was apparently served on September 16, and immediately telephoned Ed Thomas, Manager of the Southcentral Farmers Committee, an organization of growers to which the Canata Ranch had belonged for six or seven years. Thomas arranged for counsel to be provided by Respondent's counsel here, pursuant to an agreement with its members. This law firm had represented the Ranch in various labor matters since 1975. Evidence of a telephone call by Canata to the attorneys on September 10, and nine calls to the Southcentral Committee beginning on September 10, were also introduced through his testimony. The Committee's arrangement with its members is that the Committee pays a percentage of legal costs, and members are assessed equally to finance these

20. No. 81-RD-2-D.

costs. However, here the Committee is footing the entire bill for Respondent's case, a fact which Canata did not freely reveal until pressed at length.²¹

The role of the Committee also includes helping different growers negotiate with the Union. In the period before the Canata decertification effort, Respondent and two other farms have been negotiating together concerning contracts which ended simultaneously. There had also been three decertification efforts in the Delano area at farms of Committee members just before the Canata decertification. In all three cases the same attorneys handled the legal work. All three ranches and Canata hired Joe Sanchez, a management labor consultant, to work with them during their decertification campaign; in Canata's case, Sanchez attended campaign meetings and translated Canata's speeches into Spanish.

The decertification election at the Radovich Farm was held on September 8, the day before the Canata workers' meeting, and Ed Thomas testified he informed his members about it immediately. Canata denied he knew about Radovich, testifying he learned about that vote only after his own election, and said he did not talk to the other farmers.

21. Canata first said any arrangement for payment of legal fees relating to labor matters by the Committee is determined at the discretion of the Board of Directors, and that he was unaware of what the arrangement is; later he said the percentage is not discretionary but is established by a rule he was unaware of. When asked whether the Committee was paying a percentage of his fees, he said he had no idea what percentage. Finally he conceded that all his legal fees are being paid in this case. R.T. X:130-136.

Later he conceded he might have heard about the Radovich election on September 8. Thomas also involved the press and two state legislators in the Canata case, and the legislators sent a telegram to the Board office in Delano on September 15, the day before the petition was filed, expressing concerns about the handling of the petition.

Respondent began campaigning for decertification, and delivered several speeches to the workers over the next two weeks. Sanchez accompanied him at most of these meetings as translator. The evidence was in dispute over the degree to which Canata ever departed from his prepared text, but both sides agreed there was some dialogue at the meetings that is not reflected in the draft speeches, which were placed in evidence. In his testimony, Canata said he viewed Sanchez as a neutral party, and did not know Sanchez had worked for other Southcentral Committee members.

Canata granted the employees a pay raise during the campaign. Agreement was reached with the Union in the ongoing negotiations, just after the decertification petition was filed, for Canata to increase the hourly wage to \$4.45, the amount he had been offering to the Union. In his first campaign speech to the workers, he announced the increase, retroactive to July 1, "[a]s evidence of my fairness."²² He also discussed medical insurance in these meetings and answered questions about the company's medical plan, which

22. U.F.W. Ex. 2.

covered eye and dental problems. Canata testified that he did not offer such coverage, but merely said it could be talked about if the company won; Sally Nachor, however, stated that Canata did not make the coverage conditional on an election victory; Cervantes testified similarly as to the meeting he attended.

The election was scheduled for September 23. On September 22, complaint No. 81-CE-217-D issued, charging a ULP in that Canata paid workers holiday pay for Labor Day not called for by the contract, without bargaining for it, for the purpose of decertifying the Union. On the same date, the amended version of No. 81-CE-198-1-D issued. Based upon it, the Regional Director determined that a fair election could not take place, and the decertification petition was dismissed. Jackie Lopez was notified that she could appeal the dismissal. Lopez did not appeal; Canata said that she was "disgusted," but said he did not know she was not appealing. Instead, he himself authorized an appeal of the dismissal. He contradicted himself as to whether he discussed appealing with Jackie. He also called a meeting of the employees in which he criticized the dismissal of the petition and said that the Union was afraid of an election and had persuaded the Board to dismiss. He acknowledged in his testimony that he felt strongly about the dismissal.

On September 25, the petition was reinstated by the Board and an election was scheduled for September 29. Respondent met again with the workers and told them he had

gotten the Board to order the election. The campaign resumed. Munoz was involved in the campaigning and called Salvador Gandorilla, one of the workers, daily to discuss the election. Munoz told him the expected votes for both sides in the election were even and only Sal's and his wife's were uncertain; if Canata lost the election, it would be known how they voted. Munoz denied saying this. He also promised that Sal would not lose his job if the Union was voted out. During his testimony, Munoz made it clear he felt quite strongly about the decertification, but also maintained that he did not tell anyone whether to vote for or against decertification.

On the day before the election the last meeting called by the company took place. Cervantes was present and refused to leave at Canata's request. Canata told the workers the Union had done everything possible to stop the election and that the Union dues paid by the workers go to pay the Union organizers' salaries rather than medical coverage. According to Canata's testimony, Cervantes interrupted and denied that the dues paid his salary; he also got into a discussion with Munoz about medical benefits. Cervantes testified he told the workers the Union had offered a better medical plan in the negotiations and that Canata had refused to agree to it. His testimony discussed the fact that he was a "volunteer" rather than a paid Union organizer, but admitted that the Union had provided him with various benefits in lieu of salary.

Respondent also offered evidence that Cervantes had made statements to the workers on other occasions which tended to create racial antagonism. A statement of Salvador Gandorilla was placed in evidence over objection, as impeachment, in which Salvador stated Cervantes had told employees that if the Union lost, the company intended to fire the Mexican employees and hire Filipinos (R. Ex. 8).

The election occurred as scheduled and the ballots were collected and were taken to be impounded by the election observers, who included Jackie Lopez.

Jose Antonio testified that on January 12, 1982, the date following his first appearance at the hearing, Juan Munoz confronted him in the fields during a work break, called him a son of a bitch, and claimed he had lied when he testified Munoz had told him Canata was at Eddie's house the night before the workers' meeting. Munoz tried to get him to fight, then retreated and returned with Larry Nachor. Juan swore loudly, again called Jose Antonio an S.O.B., and said he was going to "get" him. Larry said nothing. Eddie Nachor was sitting 25-30 feet away in his pickup truck during this incident, and Juan and Larry returned to the pickup afterwards.²³ Later Eddie asked Jose Antonio what had happened, Jose Antonio told him, and Eddie said nothing. Munoz denied this incident except for saying he had had a problem with Jose Antonio. After hearing of this incident during the

23. The incident was the basis for a new charge, No. 82-CE-3-D, added to the pleadings during the hearing. R.T. II: 76-77. This charge was dismissed pursuant to a stipulated settlement. R.T. III:13.

proceedings the day after its occurrence, Respondent spoke with Munoz and scolded him, telling him not to get into any conversations with other workers for the duration of the hearing. He said during his testimony that he did not at first believe the charges as that was not Juan's nature. He did not check with Jose Antonio about what had happened, but only with Juan, Larry, and Eddie.

A second incident occurred on January 13 and was the basis for the amendment to the complaint made during the hearing²⁴ which alleged a threat by Juan to Roberto Gandorilla because of Jose Antonio's testimony. According to Roberto Gandorilla's testimony, Juan said to him Jose Antonio and he were "assholes" and "hyenas" and tried to start a fight. Roberto also stated that after Board agents had appeared at the ranch on January 14 to discuss the first incident and distributed a leaflet signed by the Employer concerning it, Juan made fun of the leaflet and said he was going to save it so he could be famous. Munoz denied this incident also during his testimony. Canata again reprimanded Munoz as a result of the incident with Roberto.

C. Facts Relating to the Agency and Supervisorial
Status of Jackie Lopez and Juan Munoz

Jackie Lopez

As it was the General Counsel's contention that Respondent was responsible for the acts of Lopez and Munoz,

24. See text at footnote 1 supra.

facts specifically related to this question are noted separately here.

There was considerable testimony as to whether Jackie played a supervisory role in the fields during periods when the women employees were working separately from the men. Respondent's witnesses uniformly testified that Jackie played no supervisory role. Most of the opposing parties' witnesses contradicted them. Avelina Coronel stated that Jackie was the one who told them what to do when Eddie was not present. She said Jackie did not always take her own row of grapes, and that she was the one who attached yellow ribbons to indicate missing vines. Respondent's witnesses stated that all the women used the yellow ribbons. Coronel also stated that Eddie or Jackie would separate women who were talking during the work. Rosalia Gandorilla said Jackie directed the women and that Eddie did not come often when the women worked alone. Respondent's witnesses stated that Eddie came every day, that Jackie did not always take her own row, and that she checked the women's work. Rosalia Gandorilla is married to Salvador. Victor Chavez, who worked with the women's crew during one period because he was older and was unable to do strenuous work, said Jackie acted like a foreman, calling the breaks and telling the workers what rows to take. Respondent's witnesses contended that breaks were always at the same time and that any worker who had a watch or a radio was liable to announce the time. Chavez was no longer a Canata employee at the time of the

hearing. Jose Antonio also testified that Jackie acted like a foreman when the women worked alone. Jackie was apparently a very fast worker and often helped other less skilled employees.

Victor Chavez also testified that Eddie had told him when he was assigned to work with the women that Jackie would give him instructions. He related further that at an earlier time Eddie had been talking with him generally about his youth and other subjects and told him that it was his practice to have Jackie supervise the women when they worked alone.

Juan Cervantes also testified that on January 1981 he went to the ranch to deliver identification cards for the medical plan to several workers. He approached two of the women workers and asked who the foreman was and they pointed to Jackie. He asked Jackie if she was in charge of the crew, and she said she was. He then explained that he needed the ID cards filled out, and she said she would take care of it, and he left the cards with her.

Jackie had worked with Canata since 1977. Several months after she began working she was asked to prepare the payroll each week from her father's record of hours. She has done this ever since. At first she received a bonus for this work; subsequently she has received an hourly wage higher than that of the rest of the work force. The wages

at the time of the hearing were as follows:

Eddie -- \$4.75

Larry -- \$4.75

Juan Munoz -- \$4.70

Jackie -- \$4.65

Fieldworkers -- \$4.45²⁵

On certain occasions the workers were paid by the row, and Jackie received more per row than the others. This extra pay is not provided for by the contract.

In addition to this extra pay, Jackie received her wage for the time spent preparing the payroll, which amounted to about one hour per week, and she kept track of this time. In the first year, she spent less time -- about 2-3 hours total during a 3-4 month season.

There were occasions on which Jackie did not rely on Eddie's book for the number of hours worked, but supplied the information herself. Sometimes her record-keeping responsibilities might continue for an entire week. Jackie stated that usually when the women worked alone she was the one who recorded the number of hours worked.

Jackie recorded the seven hours for which the workers were all credited on the day of the September 9 workers' meeting; she did this on her own without being told to do so. She was asked if she recorded hours herself on other

25. G.C. Ex. 6. In January 1981, the wages were: Eddie, \$4.40; Larry, \$4.40; Juan, \$4.35; Jackie, \$4.30; Others, \$4.10.

occasions, and she replied that she did if she knew how many hours had been worked. Trini Sapien confirmed that Jackie kept track of the hours.

Jackie stated that she also kept count of the cards used to calculate the piece rate during those periods when the women were not working on an hourly basis. In these periods, she kept the records for a week at a time before she turned them over.

Only Jackie and Eddie had received Christmas bonuses, Eddie received a bonus each year. Jackie received \$125 in 1980, but nothing in 1981. Nick testified that he paid the bonus in 1980 because Jackie had not been working but still did the payroll and did not get paid for it. After examining records demonstrating that Jackie worked in 1980, he corrected this testimony. The payroll reflected a scratched-out entry of a bonus for 1981; Canata testified he changed his mind about giving her a bonus because he felt the higher wage adequately compensated her for keeping the payroll. Eddie's bonus for 1981 was not reflected in the payroll and was paid in cash according to Canata; he said no other payments were ever made that were not reflected in the records.

Nick kept a diary in which he made notes of work to be done and frequently made references to "Jackie +" a number and "Ed +" a number, indicating the number of workers with Jackie and Eddie. He denied that he considered Jackie to have a crew under her direction. Eddie's time record book lists Eddie and Jackie on the first lines of each

page before the names of any other workers; the payroll does the same.

Juan Munoz

Juan Munoz previously drove a tractor for Canata, but due to an illness was no longer able to do so. As a tractor driver, he had earned a wage higher than that of the field-workers. After he became ill, Nick said he had kept him on at his prior wage out of sympathy, and because Juan was his second oldest employee. He continued to do some work that was different from that of the other workers including irrigation and "swapping," or carrying the harvested grapes to cold storage.

Juan had his own separate time card and often kept his own time as did Larry Nachor and Max Macias. These three were also on a different payroll when he kept him on at the tractor driver's salary even after he became ill. Max and Larry are not covered by the contract, while Juan is a member of the regular crew. Sometimes Nick kept time for the three. Eddie also sometimes kept a record of Juan's work with the rest of the crew even though separate records were kept. According to Jackie, Juan apparently had the power to tell her whether he wished to be listed on the payroll with the rest of the crew or separately. Eddie never kept records of Larry's or Max's time. Juan was paid \$4.70 at the time of the hearing, the same as Larry. There was testimony that he was known to boast about earning more than the other workers. There was also testimony from Jose

Antonio that Munoz pressured people at work by watching them, reporting on them to Eddie, and complaining when they took too long getting a drink of water.

Munoz was quite defensive during the hearing and, on being pressed with respect to exactly where and when he and Jackie had planned what they were going to say at the meeting with the workers, indicated he felt as if he were being scolded. At another point during his testimony Munoz was laughing, and it was necessary to reprimand him.²⁶ His general manner was very nervous, and he manifested a very arrogant demeanor. He was also evasive about his knowledge of the decertification petition procedure at the outset of the campaign.²⁷

III. Discussion of the Issues and Conclusions

A. Accountability of the Employer for the Actions of Jackie Lopez and Juan Munoz

An agricultural employer will be held accountable in an Unfair Labor Practice proceeding for the actions of his employees if the employees are acting on his behalf or their conduct is subsequently ratified, or if they may reasonably be believed by other employees to be acting for the employer or in his interests. These "quasi-agency" principles have been recently articulated in Vista Verde Farms v. ALRB, supra.

26. R.T. VIII:7.

27. R.T. VII:68-77.

[U]nder the ALRA, as under the National Labor Relations Act (NLRA) upon which the California Act was in large measure modeled, an employer may be held responsible for unfair labor practice purposes for any improperly coercive actions which employees may reasonably believe were either engaged in on the employer's behalf or reflect the employer's policy. Thus, even when it is not shown that an employer actually directed, authorized, or ratified the improper conduct, an employer who gains the illicit benefit of such coercive conduct may be subjected to appropriate unfair labor practice sanctions in order to protect the workers' rights and in order to deter similar coercive conduct in the future. 29 Cal. 3rd at 312.

The Court made it clear that the employer may be as responsible for the acts of nonsupervisory personnel as its recognized supervisors. Traditional doctrines of agency and respondeat superior are not controlling, nor is agency for the Act's purposes dependent upon prior authorization or subsequent ratification. Lab. C. §1165.4.

Employer responsibility is viewed from the employees' perspective, and turns on whether the employees have just cause to believe the agent was acting for and on behalf of management. An alternative test is whether the employer has gained an improper benefit from the misconduct and realistically has the ability to prevent a repetition or remove the consequences of the actions to the employees' right of self-organization. The employer may free himself from the consequences of such actions impliedly taken on his behalf by publicly repudiating the improper conduct and taking steps to prevent repetition; or he may escape liability for sporadic misconduct if the inference may not fairly be drawn that the misconduct was authorized by him.

In Columbia Building Materials, Inc. 239 NLRB 1342, 100 LRRN 1182 (1979), Enf'd, 106 LRRN 3076 (9th Cir. 1980), an employee who was the son of the plant manager circulated a decertification petition. He was paid more than other employees, did not punch the timeclock, was responsible for the parts inventory, conferred with salesmen, initialled time cards in the manager's absence, and relayed instructions from his father to the employees. He circulated the petition during working hours and took a day off to file the petition. The Board held that the employees reasonably considered him in charge in his father's absence and could reasonably assume that the petition was sponsored by the employer. See also Primrose Super Market of Salem, Inc. 171 NLRB 1028 69 LRRN 1352 (1968); Superior Farming Co., 7 ALRB No. 39 (1981).

The evidence concerning the relationship of Lopez and Munoz to the Employer here is more than sufficient to establish the requisite agency under the guideline of the foregoing cases. For example, I find no reason to discredit the testimony of General Counsel's witness Victor Chavez that Eddie Nachor, Respondent's foreman, told him on two occasions that Jackie was exercising a supervisory role. Chavez was a credible witness; he was no longer an employee of the ranch at the time of the hearing and he was not successfully discredited. His testimony concerning Eddie's statements was not contradicted. Nor was Juan Cervantes' testimony that Jackie held herself out to him as being the person in charge of the women's crew.

Jackie's role in keeping records of the work, especially when she acquired this information on her own and was not told what entries to make, together with the higher wages she received, certainly provided the other workers a reasonable basis for believing she held a special status with the Employer. Her wages were closer to the foreman's than to the workers'. The testimony that her added pay for doing the payroll was based on her hourly work in the fields made no sense. Extra pay alone for her record-keeping activity would be credible, but the fact that she received compensation for the hours she worked and that all of her time was compensated at a higher rate than the other workers is evidence of special status. This, combined with the fact that she is the foreman's daughter, and her activity in leading the decertification effort, which the employees knew that Respondent supported, at least created the impression that she was acting as a conduit for the Employer.

Moreover, the fact that the records show Jackie was paid for her time in traveling to the Board on two occasions to file the decertification petition is damaging to Respondent's case.

Canata's testimony regarding Jackie's Christmas bonus was suspect, especially since the payroll records could no longer be deemed authoritative once he had admitted that Eddie's 1981 Christmas bonus was not reflected in them. However, it is not necessary to make a finding as to this testimony. I do find that Jackie was compensated beyond

the contractual rate because of her special status and not solely because of her efforts at keeping the payroll.

Beyond this, Jackie was clearly the leader of the decertification effort, and was the individual who conducted all of the dealings with the Board in filing the decertification petition.

Munoz, likewise, must be held to appear to have been acting on the Employer's behalf. His wages were also out of proportion to the work he did, and he let the other workers know he was paid more than they were. He was permitted to keep track of his own hours, and his pay was recorded with that of two workers not included in the bargaining unit rather than with the crew he was a part of. His wages were only slightly less than those of Eddie, his father-in-law, and higher than Jackie's.

Juan held himself out as acting for Nick beginning at the September 9 meeting, and also appeared to be privy to special information from management. I credit the testimony that he told some workers that Nick had been to Eddie's the night before the meeting, without finding that such a visit actually occurred or that, if it did, it represented a direct instigation of the decertification campaign by Respondent. The statement created the impression that Canata was behind the decertification effort.

At the meeting, Juan and Jackie announced both the Labor Day pay and that the workers would be paid for the meeting -- information which certainly seemed to place the

two of them privy to the inner circle of management. They virtually offered the workers the company's medical plan, which was widely felt to be preferable to the Union's, and though they did not promise such a plan if the decertification were unsuccessful, that was the implication of their remarks. Either Juan or Jackie presented the Employer's side of the wage dispute with the Union, and backed it up with a plea to recognize the farm's small size as justification for a lower wage than the Union was demanding. Respondent's own witness, Sally Nachor, confirmed the General Counsel's witnesses' version of these events. If it were true that Nick could afford to pay only \$4.45 an hour, Jackie and Juan could not have known this without being privy to the negotiations or having been told by management; in any event, these statements gave the appearance of such a connection. Juan's threat when Manuel Quiroz did not raise his hand at the meeting alone could support a finding that Lopez appeared to be acting on the Employer's behalf.

Juan's subsequent actions continued the pattern. On three occasions he reacted with great vehemence when others contended that Eddie had been present at the meeting. This occurred in the incident with Cervantes and the later threat to Jose Antonio, based on Gandorilla's testimony to this effect. Munoz was quite aware of the consequences of participation in the decertification effort by the foreman, although he claimed he was not familiar with the decertification procedures and had not talked to Eddie or Nick about

them. His badgering of Salvador Gandorilla during the campaign, especially his statements that he knew how everyone was voting and would know Salvador's vote, certainly implied close company ties. Juan's threat to Quiroz when collecting signatures carried a similar message, and all his threats broadcast a clear message that management would punish those who voted against it.

The foregoing actions were violations of the Act.²⁸

I find it difficult to credit any of Munoz' testimony, as his demeanor failed to create an impression of veracity. He was evasive and contradictory, and maintained he remembered so little of events he could scarcely have forgotten that he did not create a favorable impression. On many issues he contradicted Respondent's other witnesses, including Jackie. He conceded that he felt very strongly about the decertification, and this I find completely convincing; it convinces me, also, of his bias in favor of the Employer. The extent of his questionable testimony casts doubt upon the whole of the Employer's case.

Respondent correctly points out that the Employer may escape the consequences of sporadic, unauthorized employee misconduct if, according to Vista Verde, it has demonstrated

28. In light of my ruling that sufficient agency was shown as to Juan, his out-of-court statements are admissible. They are not hearsay because they are attributable to Respondent. In addition, they tend to show the state of mind of the worker spoken to, and were offered in part for that purpose. See General Counsel's Brief, p. 7 n. 3. R.T. XIII: 26-27.

over a period of time that it will respect the employees' rights and repudiates any improper conduct. Unlike the situation in Nish Noroian Farms 8 ALRB No. 25 1982, where the employees could not reasonably have assumed that the improper actions were authorized by the employer, here Lopez and Munoz were offered benefits which could only have been seen as coming from Respondent. There has been no repudiation of these acts or statements, even of Munoz' threat to Cervantes, which Canata knew about because it was charged as a ULP. Respondent's own conduct in the course of the decertification campaign, including the payment for the Labor Day holiday and other inducements that were offered, as well as other actions discussed below, destroys his eligibility for the Vista Verde exception. The fact that Respondent has no prior history of ULP charges is irrelevant in the light of the other evidence.

B. Supervisory Status of Lopez and Munoz

The Employer is liable, of course, if actual supervisory status can be shown on either Jackie's or Juan's part, since I have found that their actions, if attributed to the Employer, are sufficient to constitute unfair labor practices.

Perry's Plants, Inc. 5 ALRB No. 17, 1979 held that the determining factor for finding supervisory status is not the percentage of time the power is exercised but the exercise of any power specified in the Act. §1140.4(j) states

in relevant part that "the term 'supervisor' means any individual having the authority, in the interest of the employer, to ... assign,... or discipline other employees, or the responsibility to direct them,... if ... the exercise of such authority ... requires the use of independent judgment."

A higher rate of pay, direction of other employees' efforts, reporting employees who do not do good work, and possession of greater skill than other employees are factors which support a finding of supervisory status. 5 ALRB No. 17 at p. 37.

Secondary indicia are to be considered in borderline cases: whether the individual is considered a supervisor by other workers, attends management meetings, or is required to use discretion in the direction of other workers. Other factors include the relative earnings of the individual and other employees, the power to assign and direct work, the authority to validate time cards and reporting to management regarding the quality of production. See also Rod McLellan Co. 4 ALRB No. 22 1978.

Other cases found no sufficient showing of supervisory status: e.g. Jasmine Vineyards Inc. 3 ALRB No. 74 1977; Yoder Bros. Inc. 2 ALRB No. 4 1976; Miranda Mushroom Farm, Inc. 6 ALRB No. 22 1980, review denied (1981); Dairy Fresh Products 2 ALRB No. 55 1976; Anton Caratan and Sons 4 ALRB No. 103 1978.

The evidence as to Jackie is borderline, even under the subsidiary tests above. Jackie was considered a supervisor by others, she earned more than they did, she had the power to assign and direct work, she kept track of the others'

work on many occasions, she had greater skill than most of the other workers and sometimes supervised rather than working on a row of vines herself. On the other hand, her activities required the use of little independent judgment, and this appears to be the key criterion under the statute. Although I find the testimony of Chavez and Cervantes, confirmed by many of the General Counsel's other witnesses, convincing, it is not sufficient to establish Lopez as a supervisor since she did not sufficiently perform the acts designated in the statute.

The evidence as to Munoz is also borderline, and in his case, likewise, I find that the evidence of supervisory authority is insufficient. He had no actual supervisory responsibilities, and while some of his actions during the decertification campaign may have served the Employer's interests, there was insufficient evidence of the requisite authority or ratification necessary for a showing of supervisory status. However, as indicated, the same evidence does support a finding of agency under the Vista Verde test.

C. Unlawful Assistance to the Decertification Effort by Respondent

The Employer is prohibited from offering assistance to a decertification campaign which substantially interferes with the workers' full exercise of their rights to self-organization, and an election will be set aside where this has occurred. Hansen Farms 2 ALRB No. 61 1976 establishes

an economic realities test: the realistic impacts of the employer's offers of benefits are measured rather than the literal limits of the offer. Benefits actually granted are evaluated identically to those made contingent on the result of an election. Changes in benefits which occur during election campaigns are to be viewed with suspicion. Telling employees explicitly they will enjoy better terms and conditions of employment without the union for the purpose of encouraging them to abandon the union is improper. Columbia Materials, Inc., supra. An implied offer of benefits is equally objectionable. Perry's Plants Inc., supra.

(1) The Payment for Labor Day

Respondent concedes that the payment of wages for the Labor Day holiday is a major issue in the case. Canata's explanation that he believed Labor Day was a paid holiday did not ring true. It is not likely that an employer who has only two paid holidays in his contract and has operated under the contract for two years would pay out money he was not required to pay. It was not a casual matter, especially as he admitted that the Union had been very concerned about the subject when the contract was negotiated.

Respondent has taken the position that even if it was improper, no sanctions should result from the payment because the workers did not understand its impact (see D'Arrigo Bros. of California, 3 ALRB No. 37 1977; Molera Agricultural Group, 1 ALRB No. 4 1975), and his witnesses

so stated. But it is just as unlikely that the workers would be unable to remember whether they were paid in previous years as it is unlikely that Canata would forget. People who work for \$4.45 per hour are not mindless about their wages. I credit the testimony of the General Counsel's witnesses here. Further, the fact that Ken Schroeder explained to one of the workers the impact of the payment, and that worker talked to others about it, which evidence was not rebutted, was sufficient to undermine Respondent's position. If, as Sally Nachor testified, workers received news of the payment happily, it must have been because it was unexpected. Even Munoz admitted it was a surprise to him.

The payment probably had a significant impact on the election. A reasonable interpretation of the action is that although the Union had been unable to obtain this benefit for the workers, the Employer was generous and the workers could expect other such generosity if they decertified the Union. Since, contrary to Respondent's position, many workers were aware of the significance of the Employer's action, the election was tainted.

(2) The Pay Raise

Here, too, a significant economic inducement was offered to the workers in the critical period before the election. Respondent admitted that the wage increase was offered to improve the workers' opinion of him: he said in one of his speeches that it was "evidence of his

fairness." Although the increase was made unconditionally, this is irrelevant under the case law. Hansen Farms, supra. Because of its timing, the Employer's action is also to be viewed askance. Id. No persuasive reason why the announcement could not have been delayed a week or two until after the election was offered. Cf. Prohoroff Poultry Farms, 3 ALRB No. 87 1977, remanded 107 Cal. 3rd 622, 167 R 191; McAnally Enterprises Inc. 3 ALRB No. 82 1977. The implication, again, is that benefits come from the employer and not the union, especially in that the workers were not told that the Union had been pressing for a higher wage which the Employer refused. Increasing the hourly while refusing to come to an overall agreement with the Union could only have been intended to deprive the Union of any credit for obtaining the increase.

(3) The Medical Plan

Here the offer was conditional, according to Respondent's testimony, but the implication was quite obvious: vote for the company and we will provide you with better medical coverage than the Union has given you. Here the impression that the benefits were conditional on the workers' vote was emphasized by Canata's deliberate vagueness on the subject. The difference between the company plan and the Union's was known to all. Again, the Employer chose not to discuss with the workers the fact that the Union also wanted a better plan and that he had refused to agree to it -- the

only possible purpose being to enhance his own image in the workers' eyes at the expense of the Union's, and thereby to influence the election.

Respondent cites the Employer's right of free speech as provided in Lab. C. §1155, but the code provision does not sanction speech which contains a "promise of benefit." Oshita, Inc. 3 ALRB No. 10 1977. The free speech provision is especially irrelevant if the offer of the improved medical coverage was made unconditionally. In fact, it was the testimony of Juan Cervantes and the Respondent's witness, Sally Nachor, that such was the case. An unconditional effort would amount to an explicit bribe. In Nish. Noroian, supra, cited by Respondent, promise of an improved medical plan made by an employee was found insufficient because the employee did not say the employer had made the offer. Here the Employer made the offer himself.

(4) Payment for the September 9 Meeting

As indicated in the factual discussion, the evidence on this subject was somewhat uncertain. Two witnesses stated that the workers were told they were being paid for the meeting. They were paid for seven hours, and Jackie made the decision to do this on her own.

I find that the evidence on this issue is insufficient to establish a violation of the Act.

D. Other Unlawful Assistance to the Decertification Effort

It was charged that Respondent's meetings with his employees were captive audience meetings. Although there was undoubtedly considerable pressure on the workers to attend the meetings and they were not told attendance was optional, I did not find enough evidence to establish a violation in this respect. Respondent did have the right to communicate his views on the election to the employees. Oshita Inc., supra. The improper conduct at the meetings already discussed is another matter. Respondent also used the reversal of the "blocking" order to his advantage, distorting the Union's role by claiming it was trying to prevent the workers from expressing themselves. His statements that their wage deductions were going to pay the organizers' salaries rather than for medical care, implied that they were getting less with the Union than they would without it and was a distortion.

The interrogation of the workers at the September 9 meeting as to their views on decertification is attributable to the Employer via the agency of Munoz and Lopez. The demand for a show of hands in the context of the meeting was coercive, especially if the testimony concerning the threat to Manuel Quiroz and the order to Salvador Gandorilla to raise his hand all the way is credited.

E. Canata's Knowledge Concerning the Decertification Effort

Although Respondent's witnesses made a concerted effort to present the Employer as ignorant of any knowledge of the decertification campaign until it was under way, I have difficulty believing many of their statements. It is particularly difficult to credit the testimony by Frances Nachor, that although she discussed decertification with Jackie and Juan, she never spoke to Eddie (her husband) about it. It was maintained by these witnesses that decertification was never discussed with Nick, and Nick, although he was familiar with the decertification procedure and the fact that the Employer could not be involved in its initiation, insisted that he told no one of this rule. Jackie and Juan denied that they were talked to about the legal framework of decertification, yet somehow they knew not to discuss the matter with Nick or Eddie. Sally Nachor testified that Jackie told her the decertification attempt could not be mentioned to Nick or Eddie. Yet it is completely illogical that these people would not have done so -- unless they had been told that they were not supposed to.

Canata maintained he heard nothing about the petition until it was filed. But he contradicted himself and also testified that he first heard about it when Cervantes and Schroeder came to the ranch on September 11. Certainly that was the latest date on which he could have learned about it. He also stated he was unaware of the difficulties Jackie

had in filing the petitions; yet Noreen Canata directly impeached this testimony with her explanation of the phone call from Jackie and her later conversation with Nick about it on September 11, when he made clear he was aware of the difficulties and the employees' need to obtain a new list of signatures. Jackie also learned from Nick that the contract was in its last year, prior to writing this on the petition form which she filed on September 16.

Munoz' behavior in the several incidents involving threats is also instructive. Clearly he felt strongly about the decertification and his identification with the Employer, who had taken good care of him by continuing his higher wages even when he could no longer work as a tractor driver. He was sufficiently committed to the decertification and sufficiently aware of the need to conceal Nick and Eddie's involvement that he threatened the Union organizer on September 11, and the Gandorilla brothers during the hearing, when anyone dared to suggest that Eddie had been present at the workers' meeting of September 9. Clearly, Nick knew of the Cervantes incident when the complaint charging it was served on him on September 11.

Nick maintained that his contacts with the Southcentral Committee and his attorneys did not begin until September 16, but since, by his own admission, he knew of the petition by September 11 (the organizers' first visit to the ranch), and probably, according to Noreen's testimony, on September 10

or early on September 11, when he talked to Jackie about her problems at the Board office, he was apparently concealing the full extent of the Committee's role. The evidence of a flurry of telephone activity between Canata and the Committee and the attorneys beginning on September 10 referred to in Canata's testimony was suspicious. The Committee's role did not appear to have been as innocent as Canata maintained, and the pattern of activity on a series of Committee ranches suggests a larger role than was admitted. Nick's concealment at first of his knowledge of the Radovich election creates further questions about this subject. The fact that two legislators contacted by Ed Thomas sent a telegram to the Board before the petition filing date, in conjunction with the other evidence mentioned, establishes quite convincingly that Canata knew about decertification and communicated about it to the Committee prior to September 16. While this was sufficient to undermine his credibility, the evidence on this point alone is insufficient to establish the kind of conspiratorial action that was suggested by the General Counsel.

These facts, combined with the general evasiveness and vagueness of Canata's statements, undermined all of the testimony he gave. He attempted to conceal the fact that the Committee was paying his legal expenses. He was vague about the content and timing of telephone conversations with the Southcentral Committee and was embarrassed by the introduction of evidence by Ed Thomas, chairman of the Committee,

that he informed the members about the Radovich election on September 8.

The evidence concerning Munoz' statement on the day of the first meeting, that Nick had been at Eddie's the night before, was insufficient to establish that this occurred or that it reflected employer instigation of the petition campaign. The evidence concerning Eddie's presence at the meeting was also borderline, and I find it was sufficiently inconclusive to establish his presence there. Nevertheless, Eddie's testimony was also evasive, in particular his testimony that he did not know about the meeting or even the election. His demeanor did not inspire confidence in his credibility, particularly on the subject of whether his son Danny had really worked for the company for the period indicated in the book or whether a falsification of those records had occurred.

Circumstantial evidence is sufficient to establish a violation of the Employer's duty not to assist a decertification effort. Abatti Farms, Inc., 7 ALRB No. 36 1981. The foregoing evidence sufficiently establishes knowledge of the decertification effort on the part of Respondent, but knowledge alone is not a violation of the statute. Id. Respondent's witnesses need not have denied any knowledge on Nick's part, since such knowledge alone would not have been a violation. Even the employer telling an employee about the decertification procedure is not unlawful. Id. The General Counsel's Brief characterizes the testimony of

Respondent's witnesses as a "strong and strange effort to conceal any contact no matter how innocent," General Counsel's Brief p. 24, and I do not disagree.²⁹

As Abatti Farms, Inc. points out, the questions of unlawful employer assistance and unlawful employer instigation are separate concepts. Abatti found that the evidence before the Board there was insufficient to establish instigation, but that a case of unlawful assistance had been proven, and I find the same to be true here. Canata illegally assisted the decertification effort through all of the activities discussed above.

I find that the testimony of Nick Canata, Eddie Nachor, and Juan Munoz is impeached by their bias, which was adequately established. I further find that the pattern of identity in the testimony of Respondent's other witnesses is based on an agreement, or at least an awareness, among the members of the Nachor family, that their testimony should conceal Nick's and Eddie's early knowledge of and involvement in the decertification campaign. As the testimony made clear, the family is a close one and is closely allied with the Employer. Eight family members are part of the regular crew, and two, Eddie and Larry, hold some special status. Most of the workers who have been with Respondent the

29. One of the strangest instances was Frances Nachor's testimony that although Quiroz and Gandorilla did not at first raise their hands during the meeting, they changed their minds and raised their hands three or four minutes later, even though no one said anything to them.

longest are members of the family. Many of them live together. This identity of interests between the family and Respondent further undermined their testimony. Under these circumstances, testimony by a witness of Respondent that supports the General Counsel's position should be given special weight. Such was the case with some of the testimony of Sally Nachor, mentioned above. She admitted that she was a strong supporter of decertification, so her bias for the Employer further enhances the believability of statements made against his interest.

On the other hand, no actual bias was demonstrated on the part of General Counsel's witnesses. It was not even established that any of them were strong supporters of the Union, although that inference might be drawn from their testimony.

Respondent's attorneys interviewed all of the worker witnesses prior to the hearing. Salvador Gandorilla's testimony that he did not recall telling the attorneys that Juan Cervantes had made statements about Respondent's intention to replace Mexican with Filipino workers was impeached with his signed statement that Cervantes had made the remarks. This statement did not significantly undermine his credibility. In reality, the fact that he gave this statement in the first place supports his impartiality; also, he told the attorneys he did not believe that Canata was involved in the decertification. He was a credible

witness in all other respects. Victor Chavez was the only other of the General Counsel's witnesses who was impeached. He denied to company attorneys that he knew he was being paid for Labor Day, but this was untrue. He testified that he told them he did not know he was being paid because he was afraid for his job, having had difficulties in the past obtaining employment when he was involved in Union matters. I find this explanation quite reasonable.³⁰ None of the General Counsel's other witnesses was significantly impeached, although Avelina Coronel was nervous and her testimony was somewhat weak in places. I find their testimony convincing, taken as a whole.

For all of the foregoing reasons, I find that the employees' free exercise of their rights in the decertification election was substantially impaired by the actions of Respondent and his agents, and I hold that the election results must be set aside and the decertification petition dismissed. While there is a statutory presumption supporting the validity of an election, Lab C. §1156.3(c); California Lettuce Co. 5 ALRB No. 25 1979; Superior Farming Co. 3 ALRB No. 35 1977, that presumption must give way, where, as here, General Counsel and the Union have established by a preponderance of the evidence that the workers were unable to exercise an uncoerced choice. D'Arrigo Bros. of California, supra.

30. He also requested that he not be required to name his current employer because of these fears.

F. Surveillance and Denial of Access

The allegation of surveillance and unlawful denial of access was not sufficiently established. The Union organizers were able to communicate with the workers both on September 11 and on many subsequent dates. While Respondent's conduct in following Cervantes when he was meeting with workers on September 11 may be criticized, it constituted only minimal interference, when analyzed in the light of the evidence of the whole. If Respondent's conduct amounted to surveillance, the consequences of the surveillance were negligible and did not warrant a holding that a ULP was committed. I make no finding on whether the attempt to deny access violated the parties' contractual access clause.

Since I have found that the election results may not be certified, the Employer's objections to the election need not be resolved, as they are contingent upon the Union prevailing in a certified election.³¹

31. I would comment, however, that the allegation that Cervantes interfered with the Employer's right to free communication during the meeting the day preceding the election appears to have no more support in the record than the Union's allegation it was deprived of access.

As to the Respondent's objection that Cervantes inflamed racial antagonisms on the ranch, the only evidence on the subject consisted of R. Ex. 8, Salvador Gandorilla's statement offered into evidence for impeachment. The exhibit did not constitute proper impeachment and may not therefore be considered as substantive evidence of the facts asserted. Nor would the statement, by itself, establish a sufficient interference with the election to warrant the relief sought by Respondent.

G. The Threats by Juan Munoz During the Hearing

A finding on the separate ULP charge relating to Munoz' threat to Roberto Gandorilla does not affect the validity of the election, as it occurred afterward. However, the conduct was serious and must be adequately remedied to avoid future interference with the workers' organizing activities.

Intimidation of a witness in connection with testimony before an officer of the Board is a grave matter. Juan Munoz apparently thought he could threaten witnesses with impunity before or after they testified in the hearing, and Respondent took inadequate steps to prevent a recurrence. Respondent should have known, based on the ULP charge relating to Munoz' threat to Cervantes on September 11, that Munoz needed to be controlled. After learning of the threat to Jose Antonio Gandorilla, Canata testified that he did not believe that Munoz had done what was charged, as it was not "his nature." Yet there was no testimony that Munoz denied the incident; Canata implied that he came to believe that Munoz had done so, probably because Eddie, who was present, confirmed the story. That Juan was not adequately disciplined for the second incident suggests at least irresponsibility on Respondent's part, and gives the impression of his condoning Munoz' activity. Certainly no such impression can be allowed to remain with his workforce any longer, and the Employer must take steps to assure the workers convincingly, both of

his neutrality on any further organizing questions and of his determination to prevent any coercion by Munoz or other employees.

H. Procedural Issues Related to the Election Objections

Union Objection III to the election raised the issue of the Employer's standing to challenge the dismissal of the decertification petition. Respondent is correct in pointing out that the Board's opinion in Cattle Valley Farms and Nick J. Canata Co., supra disposes of this issue.

I also find Respondent's position well-taken with regard to the Union's Objection V, that it was provided an inadequate opportunity to respond to Respondent's request for review. No prejudice to the Union has been shown here.

IV. The Remedy

Having found that Respondent has engaged in conduct prohibited by the Act, §1153(a) and (e), I shall recommend that he cease and desist therefrom and take certain affirmative actions required to effectuate the policies of the Act.

Because the decertification process has been so fully compromised by Respondent's activities, I will recommend that the results of the election not be certified.

Lab. C. §1156.3(c). Since I have found that Petitioner was acting on behalf of the Employer, the petition must be dismissed on the basis of the various unfair labor practices committed. The ballots must remain impounded pursuant to

Cal. Adm. Code §20360(c) and shall be destroyed, because they do not reflect a free and unimpaired exercise of the employees' rights under the Act. To review the employee votes would have a deleterious effect upon the future administration of the Act on the Respondent's ranch.

I shall recommend that the Employer, directly or through agents, employees, or others, cease and desist from encouraging or assisting decertification of the Union in any way, including but not limited to:

1. Unilaterally granting, promising, or offering increased wages or benefits without first giving notice to and bargaining in good faith with the certified bargaining representative;
2. Interrogating employees concerning their union activities or sympathies;
3. Surveilling union agents or employees while they are engaged in union activities;
4. Threatening union agents or Respondent's employees with reprisals in connection with their protected activities, union sympathies or votes in certification or decertification elections;
5. Interfering with, restraining, coercing, intimidating, or physically threatening any of its employees because he or she has testified or may testify in any proceeding;
6. Discouraging or otherwise discriminating against employees because of their union activities or sympathies; and
7. In any other manner interfering with, restraining,

coercing, intimidating, or physically threatening any of its employees in the exercise of their rights guaranteed by §§1152, 1153(a) and 1153(e) of the Act.

I believe special measures are required to assure that the lingering effects of the illegal decertification campaign not taint future negotiations, organizing efforts, and elections at the Canata ranch. Certification has been extended by Board order until the resolution of this case; otherwise the contract would have expired as of May 31, 1982. I will recommend that the certification be extended for an additional period of one year beyond the date of any Board review of this decision, or of the date of this decision if no objections hereto are filed. See 8 Cal. Adm. Code §20382(a).

I believe it is appropriate because of the magnitude of the improper activities and the unique position of the Employer of this ranch, where over 1/3 of the ranch personnel is part of the foreman's family and closely allied with management, to allow the Union extra access to the employees, and I will recommend that Respondent be required, at the request of the Union, to provide it access to the employees for one hour during regularly scheduled, paid worktime. The Board has held that extra access may be appropriate even where no denial of access is found. Nagata Bros. Farm 5 ALRB No. 39 1979; Jasmine Vineyards, Inc. 6 ALRB No. 17 1980.

I do not feel that the General Counsel's proposal to grant the workers an additional holiday of their choice in any new contract without the necessity to negotiate is

appropriate. If, as the General Counsel points out, the Employer is sufficiently disinterested in the cost of an additional paid holiday to have made such a payment where it was not required, opposition by the Employer to an additional paid holiday in the next contract will work against his interests, and no such remedy is necessary.

Also, I do not believe that an award of reimbursement to the Union for its expenses incurred during the decertification campaign as a result of the unlawful activity, as requested by the General Counsel, would effectuate the purposes of the Act; and this request is denied.

I recommend that Respondent be ordered to take the following actions designed to remedy the damage caused by the violations:

1. Make clear to Juan Munoz that the Employer will tolerate no violations of the cease and desist orders by any employee.
2. Sign the attached Notice to Employees embodying the remedies ordered. After its translation by Board agents into Spanish, Tagalog, and Ilocana, Respondent shall reproduce sufficient copies of the Notice in each language for all the purposes set forth in the remedial order.
3. Post copies of the Notice in all appropriate languages in conspicuous places on Respondent's property, including places where notices to employees are customarily posted, for one year, the place of posting to be determined by the Regional Director. Respondent shall take reasonable steps to insure that the notices are not altered, defaced, or

covered with other material, and shall replace any notices so altered, defaced, or covered.

4. Mail a notice, containing the terms of the Board's order, in writing, to the last home address of all 1981 employees.

5. Provide a copy of the Notice to each employee hired by Respondent during the twelve-month period following the remedial order.

6. Arrange for Board agents or representatives of Respondent to distribute and read the Notice in all appropriate languages to its employees assembled on Respondent's time and property, at times and places to be determined by the Regional Director. Following the reading, Board agents shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or the employee rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

7. Make periodic reports to the Regional Director, notifying him in writing what steps he has taken to comply with the Order.

Upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to §1160.3 of the Act, I hereby issue the following recommended:

ORDER

Respondent, Nick J. Canata, his officers, agents, successors and assigns, shall:

1. Cease and desist from:

A. Unilaterally granting, promising, or offering increased wages or benefits without first giving notice to and bargaining in good faith with the certified bargaining representative;

B. Interrogating employees concerning their union activities or sympathies;

C. Surveilling union agents or employees while they are engaged in union activities;

D. Threatening union agents or Respondent's employees with reprisals in connection with their protected activities, union sympathies or votes in certification or decertification elections;

E. Interfering with, restraining, coercing, intimidating, or physically threatening any of its employees because he or she has testified or may testify in any proceeding;

F. Discouraging or otherwise discriminating against employees because of their union activities or sympathies; and

G. In any other manner interfering with, restraining, coercing, intimidating, or physically threatening any of its employees in the exercise of their rights guaranteed by §§1152, 1153(a) and 1153(e) of the Act.

2. Take the following affirmative actions which are necessary to effectuate the policies of the Act:

A. Grant the U.F.W., at its request, access to Respondent's employees for one hour during regularly scheduled work time on Respondent's premises, the employees to be paid their regular wage during said period, at a time to be determined by the Regional Director after conferring with the Employer and the U.F.W.

B. Make clear to Juan Munoz that the Employer will tolerate no violations of the cease and desist order by any employee.

C. Sign the attached Notice to Employees embodying the remedies ordered. After its translation by Board agents into Spanish, Tagalog, and Ilocana, Respondent shall reproduce sufficient copies of the Notice in each language for all the purposes set forth in the remedial order.

D. Post copies of the Notice in all appropriate languages in conspicuous places on Respondent's property, including places where notices to employees are customarily posted, for one year, the place of posting to be determined by the Regional Director. Respondent shall take reasonable steps to insure that the notices are not altered, defaced, or covered with other material, and shall replace any notices so altered, defaced, or covered.

E. Mail a notice, containing the terms of the Board's order, in writing, to the last home address of all 1981 employees.

F. Provide a copy of the Notice to each employee hired by Respondent during the twelve-month period following the remedial order.

G. Arrange for Board agents or representatives of Respondent to distribute and read the Notice in all appropriate languages to its employees assembled on Respondent's time and property, at times and places to be determined by the Regional Director. Following the reading, Board agents shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or the employee rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all non-hourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

H. Make periodic reports to the Regional Director, notifying him in writing what steps he has taken to comply with the Order.

The election held on September 29, 1981, at Respondent's ranch shall not be certified, and the petition in Case No. 81-RD-2-D is dismissed. The ballots cast at said election and impounded pursuant to the Board's order of September 25, 1981 shall be destroyed under the direction of the Regional Director.

The certification of the U.F.W. is extended for a period of one year from the date of this Opinion or the date of a

decision by the Board upon review of this Decision, whichever is later.

Allegations in the Complaint not specifically found herein as violations of the Act, including the allegations in Cases No. 81-CE-201-D (refusal of access and surveillance), 81-CE-239-D (interrogation of witnesses), and 82-CE-2-D (employment in violation of §1154.6) are dismissed.

DATED: July 15, 1982.

A handwritten signature in dark ink, appearing to read "Beverly Axelrod", is written over a horizontal line.

BEVERLY AXELROD
Administrative Law Officer

NOTICE TO EMPLOYEES

After a trial where each side had a chance to present its facts, the Agricultural Labor Relations Board has found that we interfered with the right of our workers to freely decide if they want to retain the U.F.W. as their representative. The Board has told us to send out and post this Notice.

We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives all farmworkers these rights:

1. To organize themselves;
2. To form, join or help unions;
3. To bargain as a group and choose whom they want to speak for them;
4. To act together with other workers to try to get a contract or to help and protect one another;
5. To decide not to do any of these things.

Because this is true, we promise that:

WE WILL NOT offer you any increased benefits or wages without first discussing them with the union which represents you.

WE WILL NOT ask you about your union activities or sympathies.

WE WILL NOT interfere with your right to talk with union organizers by spying on your discussions with them.

WE WILL NOT threaten you or the union organizers, or punish you in any way, because of your union activities or sympathies or in order to influence your vote in any election.

WE WILL NOT interfere with you or threaten you because you have testified or may testify in any hearing under the Agricultural Labor Relations Act.

WE WILL allow the union an extra hour on company time to talk with you, for which you will be paid.

WE WILL arrange for this Notice to be read in a meeting of employees on our time. Afterwards you will be given the opportunity to speak to an agent of the Board outside the presence of our supervisors.

WE WILL post this notice in English, Spanish, Tagalog, and Ilocano for one year and replace copies which are damaged or removed.

WE WILL provide a copy of this notice to all new employees hired in the next year.

WE WILL keep the Board informed of our compliance with its Order.

The ballots cast at the election held on September 29, 1981, to decide whether the union should continue to represent you will not be counted. All votes cast in that election will be destroyed and no one will know how people voted. The decertification petition filed last September by Jackie Lopez has been dismissed.

The union's right to represent you is recognized and extended for another year.

A copy of the Board's order is available for your inspection at its office at 627 Main Street, Delano, California, telephone number (805) 725-5770. You may contact the Board with any questions you may have concerning this Order.

THIS IS AN OFFICIAL NOTICE OF THE AGRICULTURAL LABOR RELATIONS BOARD.

DO NOT REMOVE OR MUTILATE.